1	IN THE CHANCERY COURT OF THE FIRST JUDICIAL
2	DISTRICT OF HINDS COUNTY, MISSISSIPPI
3	
4	KEVIN BUCKEL PLAINTIFF
5	VS. CAUSE NO. 2009-909 T/1
6	INSURANCE COMMISSIONER MIKE CHANEY DEFENDANT
7	
8	******************
9	TRANSCRIPT OF HEARING
10	******************
11	APPEARANCES:
12	Present and Representing the Plaintiff:
13	Kevin Buckel, Pro Se
14	
15	Present and Representing the Defendant:
16	Lisa L. Colonias, Esq.
17	Lisa L. Colonias, Esq. George Neville, Esq. Office of the Attorney General Civil Litigation Division Post Office Box 220
18	Post Office Box 220 Jackson, Mississippi 39205
19	Juckson, 111331331pp1 33203
20	* * * *
21	
22	Transcript of hearing held in the above styled and
23	numbered cause before Judge J. Dewayne Thomas,
24	commencing on Monday, August 31, 2009, at 2:25 p.m.
25	
26	
27	
28	
29	

ı		
1	INDEX	
2		Page No.
3	Motion for Summary Judgment by Defendant	3
4	Argument by Plaintiff	7
5	Court's Ruling	22
6	Conclusion of Hearing	23
7	Court Reporter's Certificate	24
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		

1	THE COURT: Since this is a summary
2	judgment I thought we better do it on the
3	record, because it could be dispositive and
4	somebody might appeal it.
5	MS. COLONIAS: All right, Your Honor.
6	THE COURT: Is this your motion?
7	MS. COLONIAS: Yes, Your Honor, it is.
8	THE COURT: And, sir, what is your name?
9	MR. BUCKEL: Kevin Buckel.
10	THE COURT: And you represent yourself?
11	MR. BUCKEL: Yes, sir.
12	THE COURT: Do you want counsel?
13	MR. BUCKEL: (No response.)
14	THE COURT: Do you need counsel?
15	MR. BUCKEL: No, sir.
16	THE COURT: Okay. You understand this
17	could be dispositive against you?
18	MR. BUCKEL: Yes, sir.
19	THE COURT: Okay. So you don't want
20	counsel?
21	MR. BUCKEL: No, sir.
22	THE COURT: All right. Ma'am, you may
23	proceed.
24	MS. COLONIAS: May it please the Court,
25	Your Honor?
26	THE COURT: Yes, ma'am.
27	MS. COLONIAS: Lisa Colonias for the
28	State.
29	Your Honor, we're here today to

1

4 5

6 7

9

8

11 12

10

13 14

15 16

17

18

19 20

21 22

23

24 25

26

27

29

28

respectfully ask this Court to grant our motion for summary judgment. There are two basic issues before this Court. The first is with regard to the denial of a public records request. And Mr. Buckel seeks judicial review of that request as of right.

The secondary issue is that when Mr. Buckel filed the complaint he added an additional request for State Farm examination documents, which were not in his original public records request, so they don't come under judicial review. More importantly, examination documents are barred wholly by statute.

Your Honor, as for the first issue, the denial of the public records request, Mr. Buckel wrote to the Mississippi Insurance Department on January 4th, 2009, requesting certain documents with regard to Hurricane Katrina. After a diligent search the Department of Insurance determined they did not have those documents and they wrote to Mr. Buckel denying that request on the basis of not possessing the documents. And he has filed this action for review.

Attached to our motion for summary judgment we provided the affidavit of Donna Cromeans, who with personal knowledge and being duly competent to testify and being qualified

evidence under Rule 56(e) provided affidavit testimony that she had undertaken a diligent search and none of those files were in the possession of the Insurance Department.

Your Honor, right now that evidence stands uncontroverted and in our opinion respectfully must be accepted by the Court as dispositive evidence that we are entitled to summary judgment as a matter of law. The Insurance Department cannot produce records that it does not possess. And in the response to our motion for summary judgment, Mr. Buckel has conceded that the Department does not have to compile or gather data that it does not have. And that is well settled law as well, Your Honor.

As to the second issue with regard to the examination documents, examination documents were not a subject of the first request, so it is improper to ask this Court. But much more importantly Mississippi Code Annotated 83-5-209, of which I have a copy if the Court would like to see.

May I approach the bench?

THE COURT: You can. Thank you.

MS. COLONIAS: May I give one to --

THE COURT: Yes.

MS. COLONIAS: Thank you, Your Honor.

It is just a copy of the statute.

Under Subsection 7, Your Honor, all

working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commissioner or any other person in the course of an examination made under Sections 83-5-201 through 217, may be held by the Commissioner as a record not required to be made public under the Mississippi Public Records Act. That is a dispositive statute. The plain language makes it very clear that not only are examination documents exempt by legislative mandate, but they are specifically exempt from the Public Records Act.

Your Honor, as a matter of law, we request that summary judgment be entered on our behalf because these have never been requested and it would be completely against statutory authority to demand that the Insurance Department provide documents that are exempt by statute. And, frankly, we don't even -- we're not admitting that the Insurance Department even possesses these documents. Mr. Buckel says there are a minimum of 43,000 files that were examined by the team. And that's -- having never been requested we don't even know the substance of that or where those documents are.

THE COURT: All right.

MS. COLONIAS: Your Honor, is there
anything I might add or --

1 THE COURT: I don't know enough about 2 what his claim is yet. Maybe I will know in a 3 minute. 4 MS. COLONIAS: All right. Thank you, 5 Your Honor. 6 THE COURT: All right, sir. 7 MR. BUCKEL: Yes, sir. In the initial 8 letter sent on January 4th -- in the initial letter sent on January 4th, I requested all 9 10 claims filed, paid and denied as a result of 11 Hurricane Katrina from the Mississippi 12 Insurance Department. And we believe that the 13 State Farm files that we later requested under this action was included in that request. 14 15 we would --THE COURT: What are you trying to find 16 17 out? What do you want to know? 18 MR. BUCKEL: After Hurricane Katrina I 19 was a slab owner and we --20 THE COURT: A what owner? 21 MR. BUCKEL: A slab owner. I just had a 22 slab left for my house. 23 Your house got blown away? THE COURT: 24 MR. BUCKEL: Yes, sir. 25 And we were unjustly denied our claims. 26 In a lot of cases not even -- claims were not 27 even evaluated before being denied. And I have 28 been trying to pass legislation, a homeowners' 29 insurance bill of rights up here in the hill.

1	And I haven't been very successful. Been
2	blocked by some strong lobbyists. So I need
3	this information to convince our legislators
4	that we need stronger homeowner rights in the
5	state for all homeowners.
6	THE COURT: All right. So your house got
7	blown away?
8	MR. BUCKEL: Yes, sir.
9	THE COURT: Did you hire a lawyer to help
10	you with that matter?
11	MR. BUCKEL: Yes, sir.
12	THE COURT: What happened on that suit?
13	MR. BUCKEL: We settled out of court.
14	THE COURT: So what you are trying to do
15	is find out information concerning other
16	homeowners?
17	MR. BUCKEL: All the homeowners as a
18	result of Katrina to show the legislators how
19	unfairly we were denied our homeowner
20	insurance claims after the storm. And to
21	hopefully pass stronger homeowner rights for
22	all homeowners in the state. So that is why
23	I'm seeking this information today.
24	THE COURT: But the AGs have told you
25	they don't have that information.
26	MR. BUCKEL: Well, we believe they do,
27	sir. I have included three exhibits, E, D and
28	C. And this was under former Commissioner
29	George Dale's office where he specifically

1

refers to exact numbers -- claims numbers that were put out on press releases from the Office of Insurance. And so we believe that they are there. And then also under the State Farm conduct exam, George Dale did not follow his own procedures that govern that exam. requested the 43 files and three months into the exam he went back to State Farm and forced them to reopen all of their claims that were previously denied, which resulted in another \$80 million being paid. However, the rules that govern that conduct exam specifically state that he is supposed to adopt his findings, make them public and then he should have approached State Farm. So we believe because those files were misused and he didn't follow the right procedures a summary of those files should be made to the -- available to the general public.

THE COURT: All right. But the AG said they don't --

Y'all have those?

MS. COLONIAS: No, Your Honor, the
Insurance Department does not have the files.
And the information -- the statistics that Mr.
Buckel refers to were provided by a national data call. They never compiled these statistics. They simply received them from a national data call and put them on the

 website. They did not have the underlying statistical information. And there is uncontroverted affidavit evidence to that effect.

THE COURT: How do you dispute that?

MR. BUCKEL: Your Honor, there is two
issues here. One is that the information that
was disseminated from the MID about claims
filed and paid in the state after the storm.
It is very exact detailed information. So,
obviously, they were compiling this
information somewhere and it should have fell
under the request that I initially sent in.

However, on the other issue, the 43,000 files that were subpoenaed under the conduct exam, something obviously led George Dale to go back to State Farm and force them to reopen all these cases, a summary of that information. should have shared that information with the public. He had no authority under the rules to govern that exam to go to State Farm and approach them before finding -- adopting the final results of that exam. So we are approaching this on two issues. appreciate the argument that's being made that they don't -- they are saying they don't have the records. However, when it comes to the conduct exam, obviously, there has to be something there, because George Dale clearly

states in the summary -- Commissioner Chaney clearly states in the final results of the conduct exam that in March of 2007, they went back to State Farm and forced them to reopen all these cases. And that put the homeowners who were still in dispute with State Farm in a very unfair disadvantage. That information should have been made public and it should be made public now since there was a misuse of power by former Commissioner Dale.

MR. NEVILLE: Your Honor, if I may, I don't think there is any dispute that Attorney General Hood was attempting to try to do everything he could to assist the homeowners and had a real beef with State Farm.

However, we're representing the Department of Insurance here and with all the sympathy and trying to have an understanding of what the homeowners are going through is that the market conduct exam is not commonly done. They are rarely utilized when the Commissioner determines that there is a unique circumstance he feels like that they need to go in and actually audit claims files. And they can do every one or they can do a random sample. And as you may remember, I've represented the Department of Insurance for five years and these market conduct examinations are just like a financial examination, they are confidential.

29

And the only thing that is available to the public would be the report. And the decisions that are made by Mr. Dale as Commissioner about why he may want to stop midway through a market conduct exam and require a company to do something or not is not public information. Ι mean, he -- it is still part of the market I'm curious. I'd love to know. conduct exam. But, I mean, it is just not something that -that the statute allows to be made public. Certainly, State Farm could do that if they wanted to. I don't suspect they would, but they would have the right to do it, because it is their documents. They are not the state's documents. And the only reason we get to look at them is because of the extensive, broad jurisdictional authority that the Commissioner of Insurance has over insurance companies. the reason that they have that broad authority is is that there is supposed to be some discretion involved that you are not out there and attempting to try to foster more litigation. It is certainly the insurance company's excuse. So in that market conduct examination they obviously tripped upon things that they felt like was important for State Farm to do it. Frankly, there may have been some pressure from the Attorney General that they reopen those files. I would be more

29

suspicious of that motivation than the fact that they found something that the Commissioner decided he wanted State Farm to do something different. But, nevertheless, all this is interesting. It is historical. It's sad what happened. But the reality is the law doesn't allow us -- we're in that box that the law says the market conduct exam records are not public. Only the conclusionary findings. There is a right to contest the findings. And if they had an objection, they could have contested those findings that Commissioner Chaney made after he assumed office and finished up the report. don't know that they did that, but that would have been the methodology of determining whether they feel like that report was sufficient. And then I can assure you that the department doesn't have the resources to keep the kinds of information that they are seeking I mean, it just becomes a practical here. thing. And so whatever records that an examiner may go out -- they may copy the notes and everything, they are destroyed as part of that whole examination process. So when they do these data calls, that is through the National Association of Insurance Commissioners often referred to as NAIC is the acronym. And they did this data call and not the Department of Insurance. And so I certainly can

understand. It looks like George Dale had all this information and stuff, but he was just getting it from resources like the NAIC and then putting it out trying to sell the public on the fact that he was attempting to try to force insurance companies to do more. And we could debate infinitum whether he was doing enough. Okay? But, you know, that is where we are. We are just in this box where legally there is just nothing to give or there is nothing that we can legally give him. And that's why it is kind of frustrating for us. And I know it is frustrating for him.

THE COURT: So you're saying y'all don't have the documents?

MR. NEVILLE: That's right. Whatever documents that may have been retained as a result by some examiner doing the -- and they typically -- they're not even Mississippians. I mean, these people who he would have contracted with to do the market conduct exam they are people who may have come from around the country. I don't know who he hired, but typically you can't do one person. So they may have hired a team. And there are people who specialized and were doing what is called market conduct exams, which are different than financial exams. Because financial exams you can imagine are done by auditors. And they

4

5

6

7

8

10 11

1213

1415

16

17

18

19

20

21

22

23

24

25

26

2728

29

would have come in and they are supposed to destroy their notes and then whatever drafts of their reports all of that is destroyed and then compiled into its final report.

THE COURT: Mr. Buckel?

MR. BUCKEL: Your Honor, the purpose of the conduct exam is it states it is for the protection of the policyholders. Obviously, George Dale saw there was some mistreatment there going on and that is why he ordered the conduct exam. He obviously didn't go through all 43,000 files that were supplied by State Farm to him. There was a summary of those files put forth to him, which abruptly had him go back to State Farm and forced them to reopen thousands -- literally thousands of claims that were previously denied. believe those records do exist and I believe they would have to be not destroyed because to back up in case this went any further why he did not follow his own procedures and went to State Farm without adopting his findings and making them public. The purpose of the conduct exam is for the benefit of the policyholders, especially the policyholders who were unfairly denied and are being mistreated by insurance companies. He clearly didn't follow his own rules and he should have found -- adopted those findings, made them

public, then went back to State Farm. The other thing I would like to point out, Your Honor, is that this Court does have the authority to review those files or what information before making a judgment in this case.

THE COURT: Okay. What is the second part that he had?

MS. COLONIAS: Your Honor, the second part is the examination documents that are exempt by statute. The first part is the initial public records request that Mr. Buckel made. A diligent search was made. Those documents are not held by the Insurance Department. We have affidavit testimony to that effect that they simply don't exist. And we believe that we are entitled to summary judgment as to that.

As to the secondary issue of the conduct exam and the underlying files, those are exempt by statute and have not been before requested and they are -- an exception has been carved out by the legislature. So we believe we are entitled to summary judgment as to that as well, Your Honor. Those are both of the issues.

THE COURT: What about the second part?

MR. BUCKEL: Well, again, Your Honor, I

would argue that because the purpose and the

scope of the freedom of information request and the conduct exam is for the protection and the benefit of the policyholders that those 43,000 policies clearly exist and clearly were in the possession of MID. They had them. George Dale didn't go through every one of those files. So a summary report or a summary of those files is -- exist, I believe, somewhere in MID.

Also, it's reasonable to argue that the reason why George Dale went back to State Farm and forced them to reopen thousands of homeowners' claims is because of the amount -- amount of claims that were denied. And that is the magic number we need as far as policyholders in this -- throughout this whole state. We need to know how -- the public should know how bad we were all treated after Katrina. And I believe this Court -- I would ask the Court to review this information before making a judgment.

THE COURT: Why didn't you sue State Farm?

MR. BUCKEL: My policy was with Nationwide.

THE COURT: Okay.

MR. BUCKEL: Yeah, I'm here on behalf of my homeowner's insurance bill of rights that I am trying to strengthen the rights

1 legislatively. We have asked Commissioner 2 Chaney and Commissioner Dale to adopt these 3 rights. However, they have been uncooperative 4 to this point. So we have to try the 5 legislative process now. 6 THE COURT: Well, why don't you get you a 7 legislator to introduce that bill? 8 MR. BUCKEL: We have, Your Honor. Ιt 9 died in committee without a vote. 10 THE COURT: Imagine that, All right, 11 MR. NEVILLE: Your Honor, I hate to be 12 repetitious. I think I've said this, the 13 market conduct examination report before it is 14 published --15 THE REPORTER: Excuse me, Mr. Neville. 16 Are you saying marketing? 17 MR. NEVILLE: Excuse me. Market. 18 M-A-R-K-E-T. 19 THE REPORTER: Okay. 20 MR. NEVILLE: Conduct. 21 THE REPORTER: Okay. Well, I was 22 understanding you correctly. Go ahead. 23 MR. NEVILLE: I am bad to run fast. 24 The market conduct examination statute 25 provides for opportunities for people to 26 contest the report before it is filed. And 27 there is a right of review. And I don't think 28 they availed themselves of that. That's an 29 avenue they should have had they believed that

29

there was something in that report that should have been either reexamined or changed or done differently. And, you know, he took swipes at I mean, you know, I'm here on behalf of my client. But, I mean, he took swipes at our office. And we weren't happy about it, but we, you know, we took it. But the bottom line on it is is that that -- those records don't become possession of the department. You examine them at the place of where the insurance company holds them. And if that's in Kentucky or that's in, you know, Ocean Springs or wherever it is, you go and look at those files. And this market conduct team is a group of people who are contracted by the Department of Insurance. And they again may come from all I don't know whether there over the nation. were three people or 30, but they would go out and go through these files. And they would periodically be doing -- giving tentative preliminary summaries to the Commissioner. obviously he made a determination that he felt like I want State Farm to do something different. Whatever he did in directing them to go back and reopen them was not pursuant to the final market conduct exam. It was either because he issued a bluff so to speak, y'all go do this, and they did it, or it was through some other power. But it was not a result of

the final adopted market conduct exam, because Commissioner Dale is the one who directed State Farm to reopen them and he didn't finalize the adopted report. That was done by Commissioner Chaney. So what he is asking for is understandable, especially for his purpose. But the dilemma is is that these records are not at MID. They are at those places. That is what they literally do is every 37th file or every file of whatever it is, they sit there and they go through them and they interview the claims people and the adjustors. And I don't know how thorough it was. I assume it was very thorough. But, hopefully, it was more than cursory. But the bottom line on it at the end, these people turn in a report to the Commissioner that is edited or reedited and edited and reedited, you know. And so all of the supporting documentation is exempt from public records. Just it is. I mean, there is just no way around that. The statute is so clear. And so wherever those records may be, whether it be in Omaha, Nebraska, or whether they be in Jackson, Mississippi, they are exempt from the public records law.

THE COURT: All right.

MS. COLONIAS: Thank you, Your Honor. Is there anything we can add?

MR. BUCKEL: Your Honor, on Page 9 of the

28 29

26

27

29

conduct exam under claims and analysis and review it clearly says on the fourth sentence down, the company provided a list of 43,054 claims. Various analytical and statistical testing was performed on the data files provided. So, obviously, they were provided to MID and not just looked at in some office. So, I -- and the other argument I would make is that nothing in the statute that governs the conduct exam gives the Commissioner the right to just go off and use that information without informing the public or adopting the findings. There is nothing in there that gives them that authority. So once he opened this procedure under those exams, I would argue that he was governed by those rules and that he didn't just have arbitrarily the right to go bring State Farm back to the table, the company he is actually examining because of the mistreatment of policyholders in the beginning and say reopen all these cases.

Again, I would ask the Court to review these analytical and statistical testing data before making a judgment in the case.

THE COURT: You don't agree with their position that they don't have the documents?

MR. BUCKEL: Well, Your Honor, it says here company provided a list of the claims.

THE COURT: They may have told them who

1 the claims were, but that don't mean they have 2 got the documents you want. Did you have an 3 attorney in your lawsuit? 4 MR. BUCKEL: I had an attorney help me 5 write my response to their --6 THE COURT: Documents? 7 MR. BUCKEL: -- to dismiss. 8 THE COURT: I'm talking about in your 9 original claim? 10 MR. BUCKEL: Against Nationwide? 11 THE COURT: Yes. 12 MR. BUCKEL: Yes, sir. 13 THE COURT: And they settled with you? 14 MR. BUCKEL: Yes, sir. 15 Again, this is a separate issue. This is 16 more about improving our homeowner rights for 17 the next time we have a catastrophe in this state whether it is on the coast or up north. 18 19 Again, in my particular case, and I could speak to numerous, numerous other homeowners, our 20 21 claims were denied. My claim was denied from a 22 trailer without them even looking at my house they said we were denied. I had to beg and 23 24 fight to get an adjustor over there. 25 THE COURT: I know. And I am sympathetic with you. I think you're -- what you are 26 27 trying to do is legislate something that you 28 are going to have to get at least 62 in the 29 house and at least 32 in the senate to agree

And I don't think I have the jurisdiction on. over that, so I'm going to deny the -- I'm going to grant the summary judgment. MS. COLONIAS: Thank you, Your Honor. THE COURT: You may have a claim, but I think you need to sue the damn insurance companies and I will be glad to hear it. All right. Good luck. (CONCLUSION OF HEARING.) 

## COURT REPORTER'S CERTIFICATE

2

1

3

4 COUNTY OF HINDS

STATE OF MISSISSIPPI

5

6 7

8

9

10

11

12 | 13 |

14

15

16

17

18

19

2021

22

23

24

25

26

27

28

29

I, Toni Crosson Matlock, Official Court Reporter of the First Judicial District of Hinds County, State of Mississippi, do hereby certify that to the best

of my skill and ability, I have reported the proceedings had and done in the case styled **KEVIN BUCKEL VS**.

INSURANCE COMMISSIONER MIKE CHANEY, Cause No. G2009-909

T/1, on the docket of the Chancery Court of the First

Judicial District of Hinds County, Mississippi, and that

the above and foregoing twenty-three (23) pages contain

a true, full, and correct transcript of my stenographic

notes and tapes taken in said proceedings.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the  $10^{+6}$  day of September 2009.

Toni Crosson Mattock

TONI CROSSON MATLOCK,
OFFICIAL COURT REPORTER, CSR 1244
FIFTH CHANCERY COURT DISTRICT
572 SPRING HILL DRIVE
MADISON, MISSISSIPPI 39110